

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2103**

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**Introduced by Assembly Member Ammiano**

February 23, 2012

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An act to amend Section ~~500~~ 515 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2103, as amended, Ammiano. Employment: wages and hours: overtime.

*(1) Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. A violation of overtime compensation laws is a crime. Existing law provides that for the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be <sup>1</sup>/<sub>40</sub>th of the employee's weekly salary.*

*This bill would provide that payment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee's regular, nonovertime hours, notwithstanding any private agreement to the contrary. Because a violation of this provision would be a crime, the bill would impose a state-mandated local program.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by  $\frac{2}{3}$  of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek. Existing law also includes definitions of terms used in these provisions.~~

~~This bill would make a nonsubstantive change to those definitions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. *It is the intent of the Legislature, in enacting this*  
2 *act, to overturn the decision in Arechiga v. Dolores Press (2011)*  
3 *192 Cal.App.4th 567.*

4     SEC. 2. *Section 515 of the Labor Code is amended to read:*

5     515. (a) The Industrial Welfare Commission may establish  
6 exemptions from the requirement that an overtime rate of  
7 compensation be paid pursuant to Sections 510 and 511 for  
8 executive, administrative, and professional employees, ~~provided~~  
9 ~~that if~~ the employee is primarily engaged in the duties that meet  
10 the test of the exemption, customarily and regularly exercises  
11 discretion and independent judgment in performing those duties,  
12 and earns a monthly salary equivalent to no less than two times  
13 the state minimum wage for full-time employment. The  
14 commission shall conduct a review of the duties that meet the test  
15 of the exemption. The commission may, based upon this review,  
16 convene a public hearing to adopt or modify regulations at that  
17 hearing pertaining to duties that meet the test of the exemption  
18 without convening wage boards. Any hearing conducted pursuant  
19 to this subdivision shall be concluded not later than July 1, 2000.

20     (b) ~~(1) The commission may establish additional exemptions~~  
21 ~~to hours of work requirements under this division where it finds~~  
22 ~~that hours or conditions of labor may be prejudicial to the health~~  
23 ~~or welfare of employees in any occupation, trade, or industry. This~~  
24 ~~paragraph shall become inoperative on January 1, 2005.~~

1     ~~(2)~~ Except as otherwise provided in this section and in  
2 subdivision (g) of Section 511, nothing in this section requires the  
3 commission to alter ~~any~~ *an* exemption from provisions regulating  
4 hours of work that was contained in ~~any~~ *a* valid wage order in  
5 effect in 1997. Except as otherwise provided in this division, the  
6 commission may review, retain, or eliminate ~~any~~ *an* exemption  
7 from provisions regulating hours of work that was contained in  
8 ~~any~~ *a* valid wage order in effect in 1997.

9     (c) For the purposes of ~~this section~~ *subdivision (a)*, “full-time  
10 employment” means employment in which an employee is  
11 employed for 40 hours *or more* per week.

12     (d) (1) For the purpose of computing the overtime rate of  
13 compensation required to be paid to a nonexempt full-time salaried  
14 employee, the employee’s regular hourly rate shall be  $\frac{1}{40}$ th of the  
15 employee’s weekly salary.

16     (2) *Payment of a fixed salary to a nonexempt employee shall*  
17 *be deemed to provide compensation only for the employee’s*  
18 *regular, nonovertime hours, notwithstanding any private agreement*  
19 *to the contrary.*

20     (e) For the purposes of this section, “primarily” means more  
21 than one-half of the employee’s worktime.

22     (f) (1) In addition to the requirements of subdivision (a), *a*  
23 ~~registered nurses~~ *nurse* employed to engage in the practice of  
24 nursing shall not be exempted from coverage under ~~any part of~~  
25 the orders of the Industrial Welfare Commission, unless ~~they he~~  
26 *or she* individually ~~meet~~ *meets* the criteria for exemptions  
27 established for executive or administrative employees.

28     (2) This subdivision does not apply to any of the following:

29     (A) A certified nurse midwife who is primarily engaged in  
30 performing duties for which certification is required pursuant to  
31 Article 2.5 (commencing with Section 2746) of Chapter 6 of  
32 Division 2 of the Business and Professions Code.

33     (B) A certified nurse anesthetist who is primarily engaged in  
34 performing duties for which certification is required pursuant to  
35 Article 7 (commencing with Section 2825) of Chapter 6 of Division  
36 2 of the Business and Professions Code.

37     (C) A certified nurse practitioner who is primarily engaged in  
38 performing duties for which certification is required pursuant to  
39 Article 8 (commencing with Section 2834) of Chapter 6 of Division  
40 2 of the Business and Professions Code.

1 (D) Nothing in this paragraph shall exempt the occupations set  
2 forth in subparagraphs (A), (B), and (C) from meeting the  
3 requirements of subdivision (a).

4 *SEC. 3. No reimbursement is required by this act pursuant to*  
5 *Section 6 of Article XIII B of the California Constitution because*  
6 *the only costs that may be incurred by a local agency or school*  
7 *district will be incurred because this act creates a new crime or*  
8 *infraction, eliminates a crime or infraction, or changes the penalty*  
9 *for a crime or infraction, within the meaning of Section 17556 of*  
10 *the Government Code, or changes the definition of a crime within*  
11 *the meaning of Section 6 of Article XIII B of the California*  
12 *Constitution.*

13 ~~SECTION 1. Section 500 of the Labor Code is amended to~~  
14 ~~read:~~

15 ~~500. For purposes of this chapter, the following terms shall~~  
16 ~~have the following meanings:~~

17 ~~(a) "Workday" and "day" mean any consecutive 24-hour period~~  
18 ~~commencing at the same time each calendar day.~~

19 ~~(b) "Workweek" and "week" mean any seven consecutive days,~~  
20 ~~starting with the same calendar day each week. "Workweek" is a~~  
21 ~~fixed and regularly recurring period of 168 hours comprising seven~~  
22 ~~consecutive 24-hour periods.~~

23 ~~(c) "Alternative workweek schedule" means any regularly~~  
24 ~~scheduled workweek requiring an employee to work more than~~  
25 ~~eight hours in a 24-hour period.~~